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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,
18

Plaintiff,
19

v.
20

JOSE VIERA
21

Defendant.
22
23
24

No. CR 22-211-ODW

UNITED STATES' SENTENCING POSITION

Hearing Date: March, 20 2022

Hearing Time: 11:00 a.m.

Location: Courtroom of the
Hon. Otis D. Wright,
II
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The United States of America, by and through the undersigned
prosecutors, files this sentencing position with respect to defendant
JOSE VIERA.

1 The United States sentencing position is based upon the attached
2 memorandum of points and authorities and victim impact statement, the
3 Presentence Investigation Report (Dkt. 30), the files and records in
4 this case, and such further evidence and argument as the Court may
5 permit.

6 Dated: March 6, 2023

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant JOSE VIERA ("defendant"), while serving in his capacity as a federal corrections officer for the Bureau of Prisons ("BOP") at the Metropolitan Detention Center-Los Angeles ("MDC-LA") sexually assaulted J.P., an incarcerated woman to whom he owed a constitutional duty not to subject to abuse. But instead of upholding his constitutional oath, the defendant did just the opposite. He penetrated her anus with his penis without her consent, while she was isolated and alone in a cell, sick with symptoms of COVID-19.

As a result, on May 24, 2022, the defendant pleaded guilty pursuant to a plea agreement (Dkt. 6) to a single-count Bill of Information charging him with Deprivation of Rights under Color of Law resulting in bodily injury, in violation of 18 U.S.C. § 242.

The United States has no objections to the United States Probation Office ("USPO") Presentence Report ("PSR"). (Dkt. 30). For the reasons set forth below, the United States concurs in the recommendation of USPO and respectfully requests that the defendant be sentenced to 120 months in prison followed by three years of supervised release, and that he be ordered to pay restitution to the victim and a mandatory \$100 special assessment. (Dkt 29.)¹ A 120-month

¹ The USPO recommends that the defendant register and maintain sex offender registration upon his release from custody. However, it is the United States' position that a conviction of 18 U.S.C. § 242, by itself, does not qualify as a sex offense under SORNA. See 34 U.S.C. § 20911(5)(A); *United States v. Icker*, 13 F.4th 321, 327-29 (3d Cir. 2021) (former police officer convicted of deprivation of rights under color of law could not be subjected to registration requirements under SORNA, since he was not convicted of an enumerated sex offense, notwithstanding that his conduct involved sexual assault of women he encountered during the course of his duties).

1 sentence is sufficient, but not greater than necessary, to serve the
2 purposes of sentencing, pursuant to 18 U.S.C. § 3553(a). It is
3 consistent with the recommended sentence under the United States
4 Sentencing Guidelines, reflects the seriousness of the defendant's
5 offense, endeavors to promote respect for the law by serving as a
6 deterrent to similar misconduct by BOP employees, and provides a just
7 punishment for a federal corrections officer who, instead of ensuring
8 that the victim remained safe in COVID-19 isolation, subjected her to
9 cruel and unusual punishment by anally raping her.

10 **II. FACTUAL BACKGROUND**

11 **A. The Defendant's Sexual Abuse of the Victim**

12 The defendant was a BOP corrections officer, assigned to MDC-LA.
13 As a corrections officer, he had a sworn duty to uphold the
14 Constitution, and in so doing, ensure the safety and security of
15 those housed at MDC-LA. He also knew that any form of sexual conduct
16 with inmates in his care was against the law and against BOP policy.

17 Nonetheless, during the morning of December 20, 2020, while
18 acting in his capacity as a corrections officer, the defendant
19 entered J.P.'s cell. At the time, J.P. was isolated in that cell
20 because she had recently tested positive for COVID-19 and was
21 symptomatic, experiencing a high fever, headache, body-aches, severe
22 sore throat, and difficulty breathing.² She initially thought that
23 the defendant entered her cell to bring her breakfast, as he was
24 tasked to do. She was wrong.

25 Instead, the defendant laid down next to J.P. in her bed,
26 sandwiching her between his body and the wall. In doing so, the

27
28 ² See J.P.'s victim impact statement (Exhibit 1).

1 defendant positioned himself with the front of his body pressing
2 against her back. He then touched J.P.'s breasts and pulled her
3 shorts and underwear down. He then penetrated her vagina with his
4 fingers, all without her consent. J.P. could feel the defendant's
5 penis briefly penetrate her vagina, and she tried to wiggle away.³
6 Her efforts were for naught because the defendant then penetrated her
7 anus with his penis until he ejaculated, even though she told him
8 that she did not want him to do so. As the defendant was sexually
9 assaulting her, J.P. feared that he would physically harm her, and in
10 fact, the defendant's conduct resulted in bodily injury to her in the
11 form of anal soreness and bleeding.

12 **B. The Defendant's Uncharged Sexual Assaults**

13 In addition to uncharged digital penetration noted above, the
14 defendant sexually assaulted J.P. again the following day on December
15 21, 2020. That morning, he entered her cell, and again, he attempted
16 to get into her bed. J.P. managed to stop the defendant by telling
17 him that her anus was still hurting from the day before. In response,
18 the defendant commented that he had not wanted to get her pregnant—
19 an attempted justification for his non-consensual anal penetration.

20 Although the defendant did not engage in any sexual misconduct
21 that morning, he returned that afternoon, unzipped his pants and
22 demanded J.P. put her mouth on his penis, telling her to "suck it."
23 J.P. reluctantly began performing oral sex on the defendant,
24 submitting out of fear. She was ultimately able to stop the defendant
25
26

27 ³ The defendant's touching of the victim's breasts and
28 penetration of her vagina are uncharged conduct. As part of the plea
agreement, the defendant admitted to penetrating the victim's anus
with his penis.

1 by telling him that she heard someone coming, essentially alerting
2 him that he was about to be caught.

3 Shortly thereafter, another inmate who tested positive for
4 COVID-19 moved into J.P.'s cell. Thus, the defendant no longer had
5 access to sexually assault J.P. without detection. However, J.P.'s
6 cellmate also reported sexual misconduct perpetrated by the
7 defendant. She told federal agents that the defendant grabbed her
8 buttocks on one occasion when she was facing away from him. He
9 further made inappropriate sexual comments to her about "tossing the
10 salad," a euphemism for performing oral sex on someone's anus in
11 prison. J.P.'s cellmate explained that she did not report the
12 defendant's conduct when it occurred because inmates do not
13 ordinarily report corrections officers for their misconduct.

14 **C. The Victim's Official Report to Federal Authorities**

15 J.P. herself did not immediately report the defendant's
16 misconduct to authorities. Instead, she waited three months until
17 March 2021, when she was transferred to another facility and was no
18 longer incarcerated in the same facility that the defendant worked,
19 for fear of retaliation. It was then that she provided to federal
20 authorities the torn portions of the sheets on which the defendant
21 ejaculated after he raped her. Not uncommon for victims of BOP sexual
22 abuse, she saved evidence that would corroborate her account,
23 thinking that she would not otherwise be believed. As J.P. wrote in
24 her victim impact statement (Exhibit 1):

25 Had I not had that evidence, I wouldn't have wasted my
26 time reporting anything because I would have known it
27 would be his word against mine, and [the defendant] was
28 a sworn-in correction officer at the time, and I was
just a criminally convicted felon. They would have taken
his word over mine, for sure.

Ultimately, DNA analysis of the semen on the sheet matched the defendant's DNA. Nonetheless, when federal agents from the Federal Bureau of Investigation (FBI) and U.S. Department of Justice Office of Inspector General (OIG) conducted a voluntary interview of the defendant, he falsely claimed that he never ejaculated while at MDC-LA – contrary to the fact that his semen was found on a sheet from inside a jail cell, in the possession of an incarcerated female. The defendant did, however, admit to looking at pornography and other sexually explicit material while inside MDC-LA, corroborated by digital evidence federal agents seized from his federal government-issued computer.

III. THE UNITED STATES SENTENCING GUIDELINES CALCULATION

The Supreme Court has held that although the United States Sentencing Guidelines are advisory in nature, courts "must consult these Guidelines and take them into account when sentencing." United States v. Booker, 543 U.S. 220, 264 (2005). The Supreme Court has further emphasized that a district court must begin its sentencing proceedings by correctly calculating the applicable sentencing range, which serves as "the starting point and the initial benchmark." Gall v. United States, 552 U.S. 38, 49 (2007). As reflected in the plea agreement (Dkt. 6) and PSR (Dkt. 30), the Guidelines calculation is as follows:

Base Offense	30	[U.S.S.G. §§ 2H1.1, 2A3.1]
Level: (Deprivation of Rights cross references to Criminal Sexual Abuse)		

Specific Offense		
Characteristics:		
Care, Custody, Supervisory Control	+2	[U.S.S.G. § 2A3.1(b)(3)]
Color of Law	+6	[U.S.S.G. § 2H1.1(b)]
Adjustments		
Vulnerable Victim	+2	[U.S.S.G. § 3A1.1(b)(1)]
Acceptance of Responsibility	-3	[U.S.S.G. § 3E1.1] ⁴
Total Offense Level:	37	

The defendant falls in Criminal History Category I, as do virtually all BOP corrections officers who commit sexual assault; otherwise, they would likely not be employed in that capacity by the United States Department of Justice. The corresponding Sentencing Guidelines range, at an offense level of 37, corresponds to 210 to 262 months' imprisonment. However, because the statutory maximum penalty for the crime to which the defendant pleaded guilty is 120 months in prison (significantly less than the calculated guidelines range,) the recommended guidelines sentence is the statutory maximum penalty of 120 months in prison. See U.S.S.G. § 5G1.1(a) ("Where the statutorily authorized maximum sentence is less than the minimum of the applicable guideline range, the statutorily authorized maximum sentence shall be the guideline sentence.").

⁴ The United States hereby moves for a one-level decrease pursuant to U.S.S.G. § 3E1.1(b) and the plea agreement.

1 **IV. A SENTENCE OF 120 MONTHS IMPRISONMENT IS REASONABLE AND**
2 **APPROPRIATE AND SERVES THE PURPOSE OF THE 3553(a) FACTORS**

3 Once the Court calculates the sentencing guidelines, it must
4 then consider the factors set forth in 18 U.S.C. § 3553(a) when
5 imposing a sentence. In consideration of those factors, a sentence of
6 120 months in prison is sufficient but not greater than necessary to
7 comply with the purposes set forth under 18 U.S.C. § 3553(a) (2).
8 United States v. Carty, 520 F.3d 984, 991 (9th Cir. 2008) (internal
9 citations omitted) ("The overarching statutory charge for a district
10 court is to impose a sentence sufficient, but not greater than
11 necessary to reflect the seriousness of the offense, promote respect
12 for the law, and provide just punishment; to afford adequate
13 deterrence; to protect the public; and to provide the defendant with
14 needed educational or vocational training, medical care, or other
15 correctional treatment."). That is, a sentence of 120 months provides
16 an overall just punishment because it reflects the seriousness of the
17 offense by accounting for the vile nature of the defendant's conduct.
18 And, it will promote respect for the law by holding the defendant
19 accountable for violating his Constitutional oath and trampling the
20 rule of law in such a heinous manner. See 18 U.S.C. § 3553(a) (2) (A).
21 Such a sentence also aims to deter future misconduct within the
22 federal corrections setting and to protect the public from the
23 defendant's future crimes so long as he is incarcerated. See 18
24 U.S.C. §§ 3553(a) (2) (B), (C). Finally, a 120-month sentence will not
25 create unwarranted sentencing disparities among defendants who have
26 been convicted of similar conduct. See 18 U.S.C. § 3553(a) (6).
27
28

1 **1. A 120-Month Sentence Captures the Nature and**
2 **Circumstances of the Offense**

3 When a corrections officer sexually abuses an individual in his
4 custody, the gravity of his conduct cannot be overstated,
5 particularly because of the coercive nature of the relationship
6 between the offender and the victim. But in this case, there was more
7 than a disparate power dynamic between the perpetrator and victim.
8 Here, J.P. was alone, isolated, and sick with COVID-19 at the height
9 of a global pandemic when other inmates were dying and vaccines were
10 not yet available – and she actively did not consent, letting the
11 defendant know it. These facts make the nature and circumstances of
12 the offense particularly egregious and further underscore that there
13 is no way the defendant could have thought J.P. was a willing
14 participant.

15 As part of his guilty plea, the defendant admitted that he raped
16 the J.P, fully knowing that she did not want him to penetrate her
17 anus with his penis. Nonetheless, he did so anyway, putting her in
18 fear of physical harm and in fact injuring her. Then he came back for
19 more the next day. The defendant ultimately tried to cover up his
20 criminal conduct by lying to federal agents because he knew what he
21 did was wrong and against the law, against BOP policy, and in
22 violation of his constitutional oath.

23 There are no words to aptly convey the depravity of the
24 defendant's conduct and the severe trauma that the defendant caused
25 J.P. Nor is there an adequate sentence that will truly restore J.P.'s
26 sense of safety, dignity, and bodily autonomy which the defendant
27 took when he climbed into her sick bed and anally raped her.
28 Nonetheless, in structuring the pre-indictment plea agreement that

1 calls for both a recommended and a statutory maximum penalty of 120
2 months in prison, the United States sought to both capture the
3 severity of the offense and vindicate J.P.'s constitutional rights,
4 while sparing her the uncertainty of trial and the trauma endemic to
5 testifying about the degrading and intimate nature of sexual assault.

6 With this plea agreement, the United States further endeavored
7 to recognize that the defendant, despite initially lying to federal
8 agents, took responsibility prior to a grand jury indicting him on
9 all possible charges. A 120-month sentence is significantly less than
10 the sentence he would face if convicted after trial of all potential
11 charges. But given his acknowledgement of guilt, a sentence of 120
12 months in prison will hold the defendant sufficiently responsible for
13 sexually assaulting J.P, isolated with COVID-19, and wholly dependent
14 on him for her safety and well-being.

15 Such a sentence also reflects that the defendant did not commit
16 just one act of anal penetration, though that alone warrants 120
17 months in prison. Rather it captures the scope of his misconduct that
18 only ceased because another inmate moved into the J.P.'s cell,
19 denying him the opportunity to continue to exploit her isolation. To
20 that point, the Supreme Court has repeatedly held that a trial court
21 can and should consider uncharged relevant conduct when imposing a
22 sentence in order to fully understand the scope of the defendant's
23 conduct. United States v. Watts, 519 U.S. 148, 151-52, (1997)
24 (internal citations omitted) ("Highly relevant-if not essential [to
25 the judge's] selection of an appropriate sentence is the possession
26 of the fullest information possible concerning the defendant's life
27 and characteristics."). This includes a defendant's past criminal
28 conduct, even if such conduct did not result in a conviction.

1 Nichols v. United States, 511 U.S. 738, 747 (1994); United States v.
 2 Fitch, 659 F.3d 788, 795 (9th Cir. 2011) (district court can increase
 3 the defendant's sentence based on uncharged conduct); United States
 4 v. Mustafa, 695 F.3d 860, 862 (8th Cir. 2012) (district court may
 5 rely upon uncharged relevant conduct to enhance a sentence imposed
 6 within statutory limits).

7 Therefore, to impose a sentence that fully captures the gravity
 8 and scope of the defendant's misconduct, this Court should consider
 9 that the defendant not only anally penetrated the victim, but also
 10 that he groped her breasts and penetrated her vagina, and then
 11 coerced her into performing oral sex the next day. Indeed, the
 12 defendant's uncharged conduct is, at the very least, all the more
 13 reason not to vary from a sentence of 120 months.

14 **2. A Sentence of 120 Months Promotes Respect for the Law**

15 It is especially troublesome and contributes to the erosion of
 16 the rule of law when federal law enforcement officers – sworn to
 17 uphold the Constitution – flout the law and their oath as the
 18 defendant did, first when he raped J.P. and then when he subsequently
 19 lied about it. Courts have held that where law enforcement officers,
 20 as corrections officers are, abuse their positions of authority, such
 21 offenses should be treated more seriously than crimes committed by
 22 private citizens. See United States v. Hebert, 813 F.3d 551, 563 (5th
 23 Cir. 2015) (affirming an upward variance in the sentencing of a
 24 defendant-officer based on the district court's finding that the
 25 defendant abused his position of trust when committing the offense);
 26 United States v. Thames, 214 F.3d 608, 614 (5th Cir. 2000) ("A
 27 defendant's status as a law enforcement officer is often times more
 28 akin to an aggravating as opposed to a mitigating sentencing factor,

1 as criminal conduct by [an officer] constitutes an abuse of a public
2 position."). Because of the defendant's exploitation of authority and
3 his nonchalant lies about it, and to promote respect for the rule of
4 law and the Constitution, the defendant should receive the
5 recommended sentence of 120 months in prison.

6 **3. A 120-Month Sentence Will Deter Future Misconduct**

7 The defendant exploited his position not only as a corrections
8 officer who controlled the lives of the inmates in his custody, but
9 also as an officer assigned to maintain the health and safety of
10 those in isolation as a result of the COVID-19 global pandemic. He
11 used the victim's illness and isolation as a catalyst for his
12 depravity, believing his behavior would go undetected. Similarly, he
13 lied to federal agents because he believed he could abuse the victim
14 with impunity and get away with it. Just like every BOP employee, he
15 knew that he was not permitted to engage in any sexual conduct with
16 inmates, but that did not deter him. If neither the moral wrong nor
17 the threat of prison was enough to deter him, then the United States
18 hopes that getting caught, convicted, and sentenced to 120 months in
19 prison will deter him from committing sexual assault upon his
20 release. Flores v. County of Los Angeles, 758 F.3d 1154, 1160 (9th
21 Cir. 2014) ("If the threat of prison time does not sufficiently deter
22 sexual assault, it is not plausible to assume that a specific
23 instruction not to commit sexual assault will provide such
24 deterrence.") If nothing else, a sentence of 120 months in prison can
25 ensure specific deterrence and the safety of the community for the
26 eighty-five percent of the 120 months that the defendant remains
27 imprisoned.

1 Such a sentence also aims to deter other federal corrections
2 officers more generally. Deterrence is particularly important where
3 law enforcement officers abuse their authority, as they occupy
4 positions that “‘provid[e] the freedom to commit a difficult-to-
5 detect wrong.” United States v. Hill, 915 F.2d 502, 506 (9th Cir.
6 1990), overruled on other grounds by United States v. Contreras, 593
7 F.3d 1135 (9th Cir. 2010). There are few crimes more difficult to
8 detect than sexual assault where there are rarely independent
9 witnesses and the case is often reliant on the credibility of the
10 victim. This difficulty is compounded in the prison context, where a
11 victim’s credibility is under unfair attack from the outset by virtue
12 of her status as a convicted person. Those who abuse their power know
13 and rely on this reality. Those who are victimized likewise know they
14 are not likely to be believed over a law enforcement officer,
15 particularly when there is no other evidence to corroborate their
16 account. This case is no different. That is why the victim saved
17 pieces of the semen-stained sheet and why she waited to report the
18 defendant until she was no longer at MDC-LA. A 120-month sentence
19 will demonstrate that offending officers cannot rely on the power of
20 their position or their victim’s vulnerabilities to skirt
21 accountability. While these crimes may be difficult-to-detect, would-
22 be defendants need to understand that a victim’s account is indeed
23 evidence, it will be taken seriously, it will result an
24 investigation, and where appropriate, accountability and punishment
25 will follow. The United States’ recommended sentence of 120 months in
26 prison should signal the necessity of taking such allegations
27 seriously, even when those allegations are premised on the word of a
28 victim.

1 General deterrence of sexual assault is an ideal. There is no
2 way to measure whether the sentence imposed will actually deter other
3 corrections officers from engaging in similar conduct. But given the
4 defendant's disrespect for the rule of law, the humiliation and
5 emotional trauma suffered by the victim, and the deep mistrust that
6 misconduct by law enforcement breeds, general deterrence is a worthy
7 consideration for a substantial sentence. See United States v.
8 McQueen, 727 F.3d 1144, 1158 (11th Cir. 2013) (observing that the
9 need for general deterrence is especially compelling in the context
10 of prison officials abusing prisoners). The defendant failed to
11 adhere to his constitutional obligation in one of the most violative
12 ways possible. It is in the interest of other inmates and corrections
13 officers within the BOP to know that when a corrections officer
14 violates that oath and the law, there will be serious consequences.

15 **4. A 120-Month Sentence Will Not Lead to Unwarranted**
16 **Sentencing Disparities**

17 No two cases are alike. Nor is the impact of sexual assault the
18 same for any two victims. The United States therefore considers each
19 case individually when making a sentencing recommendation, though
20 similarly situated cases help inform such a recommendation. Likewise,
21 18 U.S.C. § 3553(a)(6) states that when imposing a sentence, the
22 Court shall consider "the need to avoid unwarranted sentence
23 disparities among defendants with similar records who have been found
24 guilty of similar conduct." Here, however, law enforcement officers
25 who have been convicted of violating 18 U.S.C. § 242 throughout the
26 United States have been sentenced to a range of prison terms,
27 depending on a variety of factors, including the applicability of
28 statutory enhancements, whether they pleaded guilty or were convicted

1 at trial, and the number of people they victimized. As the cases
2 below set out, no one sentence will create a sentencing disparity and
3 certainly not an unwarranted one. Moreover, a sentence of 120 months,
4 although the statutory maximum for the crime to which defendant
5 pleaded guilty, is still 90 months below the recommended guidelines
6 range for this conduct. Additionally, due to the enactment of 18
7 U.S.C. § 250 (Penalties for Civil Rights Offenses Involving Sexual
8 Misconduct) as part of the 2022 Reauthorization of the Violence
9 Against Women Act, if the defendant committed this crime on or after
10 October 1, 2022, such conduct would be punishable up to life in
11 prison rather than up to 10 years in prison. See 18 U.S.C. §
12 250(b)(1). These new penalties illustrate Congress's recognition of
13 the gravity of this conduct and that such conduct be punished
14 accordingly.

15 A sentence of 120 months will therefore not create an
16 unwarranted disparity but rather will fall within the heartland of
17 cases involving similar misconduct. See, e.g., United States v. Shaw,
18 891 F.3d 441, 446 (3d Cir. 2018) (corrections officer sentenced to 25
19 years in prison for violating 18 U.S.C. § 242 by engaging in
20 nonconsensual vaginal penetration); United States v. Kindley, 2022 WL
21 17245115 (8th Cir. Nov. 28, 2022) (private prisoner transport officer
22 sentenced to life in prison for sexually assaulting two women in
23 violation of 18 U.S.C. § 242); United States v. Davis, 855 Fed. App'x
24 362, 363 (9th Cir. 2021) (tribal officer sentenced to 51 months in
25 prison for violating 18 U.S.C. § 242 and related statutes when he put
26 his mouth on arrestee's breasts and deleted a photograph of her bare
27 breasts); United States v. Gragg, 6:17-CR-00061 (E.D. Okla.
28 2017) (road patrol officer sentenced to 108 months in prison pursuant

1 to a pre-indictment guilty plea for forcing an arrestee to put her
2 mouth on his penis in violation of 18 U.S.C. § 242); United States v.
3 Perez, 5:13-CR-00087 (C.D. Cal. 2014) (officer sentenced to 300
4 months in prison for sexually assaulting two women during the course
5 of his duties in violation of 18 U.S.C. § 242); United States v.
6 Garcia, 2:14-CR-01251 (D.N.M. 2014) (officer sentenced to 108 months
7 in prison pursuant to a pre-indictment guilty plea officer for
8 digitally penetrating vagina of a student during a ride along in
9 violation of 18 U.S.C. § 242); United States v. Etsitty, 1:11-CR-3191
10 (D.N.M. 2012) (tribal officer sentenced to 54 months in prison for
11 violating 18 U.S.C. § 242 for driving an arrestee to a secluded area,
12 groping her breast, and then lying to the FBI about his conduct.).

13 United States v. Logan, 1:19-CR-00125 (E.D. Tenn. 2020), is
14 particularly instructive because it also involved a pre-indictment
15 guilty plea where the recommended guidelines sentence was the
16 statutory maximum penalty. In that case, the defendant, a patrol
17 officer for the Chattanooga Police Department, entered a pre-
18 indictment guilty plea to a Bill of Information charging two counts
19 of violating 18 U.S.C. § 242, resulting in bodily injury, the same
20 charge to which the defendant pleaded guilty in this case. There, the
21 officer pleaded guilty to assaulting two women he encountered during
22 the course of his duties. Because the guilty plea involved two
23 counts, his maximum statutory penalty was 20 years' imprisonment. The
24 recommended guidelines sentence was the statutory maximum because the
25 guidelines calculations would have otherwise recommended a life
26 sentence. The court sentenced the defendant to 20 years in prison in
27 accordance with the guidelines recommendation.

1 There, like here, the defendant received the benefit of taking
2 responsibility early and avoiding additional charges with higher
3 exposure. Just as in that case, here, the United States is asking the
4 Court to sentence the defendant commensurate with his crime and
5 provide him no more of a benefit than he has already received under
6 the terms of his plea agreement. In doing so, this Court would be
7 imposing a sentence that is sufficient but not greater than necessary
8 to comply with the Section 3553(a) factors.

9 **V. CONCLUSION**

10 For the foregoing reasons, the United States respectfully
11 requests the Court impose a sentence of 120 months' imprisonment,
12 followed by three years of supervised release, along with an order
13 that the defendant pay restitution to the victim along with the
14 mandatory special assessment of \$100. Such a sentence meets the
15 3553(a) sentencing objectives by promoting respect for the law,
16 reflecting the seriousness of the offense, and holding the defendant
17 accountable for his exploitive and egregious conduct.